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In re Application of : **OFFICE OF PETITIONS**
LEROY :
Application No.: 10/069,670 : DECISION
Filing Date: February 22, 2002 :
Attorney's Docket No.: P-6451 :
:

This decision is in response to applicants' "PETITION UNDER 37 CFR 1.181(A)" filed December 26, 2006, to withdraw the holding of abandonment.

The petition under 37 CFR 1.181 is **DISMISSED** for the reasons set forth below.

If applicants can establish nonreceipt of the Notice of Non-Compliant Amendment mailed January 23, 2006, then the application was never abandoned. In such case, the holding of abandonment will be withdrawn pursuant to 37 CFR 1.181. See MPEP § 711.03(c), para. I.A. The showing must include: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement by the practitioner attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement).

As to item (1), a statement by the relevant practitioner has not been provided. Indeed, it is not clear who the relevant practitioner is. It could be Mr. Kenaga or Mr. Colandreo. Neither has provided a statement.

As to item (2), this statement must also be made by the relevant practitioner. The only statement provided here is by the docketing clerk Olga Melendez.

As to item (3), MPEP § 711.03(c)), para. I.A. states that "[f]or example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report *showing all replies docketed for a date three months from the mail date of the nonreceived Office action* must be submitted as documentary proof of nonreceipt of the Office action" (emphasis added). Such a docket report has not been provided. Rather, the docket report provided shows only the entries made for application number 10/069,670.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181."

Alternatively, applicant may wish to file a petition under 37 CFR 1.137(b). If such a petition is filed, the proper response (to the Notice of Non-Compliant Amendment mailed January 23, 2006) must be included.

Further correspondence with respect to this matter should be addressed to:

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3301.


Daniel Stemmer
Legal Examiner
Office of the Deputy Commissioner
for Patent Examination Policy